

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF	)	
	)	Docket No. 72-1050
INTERIM STORAGE PARTNERS LLC	)	
	)	
(WCS Consolidated Interim Storage	)	September 13, 2019
Facility)	)	

AMENDED CONTENTION 13

The ER states that two species of concern, the Texas horned lizard and the dune sagebrush lizard, have been seen at the ISP site or may be present. The ER then makes the unsupported statement that the CIS project will have no impact on the species. The sources on which the discussion of the species were initially unavailable to the public. They have now been made available, but do not support the allegation in the ER that the CIS project will have no impact on the species, and in fact, they confirm the opposite conclusion. Furthermore, the sources are 11-22 years out of date. The ER does not reference any current studies or surveys. Therefore, the ER is inadequate in describing the affected environment.

Basis for Contention

10 C.F.R. § 51.45 requires that an environmental report must contain a discussion of the environment affected by the proposed project and the environmental impacts of the project. This includes a discussion of the various species present and their habitat. The NRC's *Environmental Review Guidance for Licensing Actions Associated With NMSS Programs* (NUREG-1748)(Accession No. ML032450279), 5.3.5, also directs that the ER must discuss the affected environment and the impacts on the environment, including impacts to important species and their habitats.

Two species of concern, the Texas horned lizard and the dune sagebrush lizard, are in the area of the ISP site. ER, 3.5.2. With no factual support, the ER, 4.5.10, claims that the CIS project will have no impact on the species. The sources that have now been made

available to the public in response to the ASLB ruling issued in this case on August 23, 2019, confirm that the ER had no basis for declaring that the CIS project would have no impact on the species.

Facts Upon Which Petitioner Intends to Rely In Support of This Contention

The ER, 3.5.2, states that the Texas horned lizard and the dune sagebrush lizard are present in an area within a 3.1 mile radius of the CIS site. More specifically, the ER, 3.5.4, states that the Texas horned lizard has been reported as being present at the CIS site and the dune sagebrush lizard might occur there. The ER, 3.4.16, cites four Texas-specific sources upon which the information on the two species is purportedly based. Those sources were initially not made available to the public, but in response to the ASLB ruling issued in this case on August 23, 2019, those sources have now been made available.

The four documents are an ecological assessment from 1997, a species survey from 2004, a supplemental survey from 2007, and an environmental assessment from 2008. These documents were submitted with a cover letter from ISP, at ADAMS Accession No. ML19248C910. It is significant that all four documents relate to the existing WCS low-level radioactive waste storage facility site, not the site of the proposed CIS project. Also, as shown by the dates, these documents are 11-22 years old.

The 1997 document, at page 3, states that it only considered species within one mile of the core area of the LLRW site. The CIS site at issue in this case is beyond that one mile radius. Page 4 of that document states that reptiles and amphibians were observed, but this appears to refer to just casual observations, not a scientific survey. So,

this document supports Contention 13, that the two species are or likely are present at the CIS site and more current scientifically supported surveys should be conducted.

The 2004 document, at page 6, states that the sand dune lizard was observed in the area of the LLRW site. Further, the document, at page 7, states that there is no suitable habitat for the sand dune lizard within 1.5 km (1 mi) of the LLRW site. The document goes on to state, however, that suitable sand dune lizard habitat exists west, north, northeast, south, and southeast of the LLRW site. Significantly, the proposed CIS site is just northeast of the LLRW site. In fact, the document states, at page 7, that the study area was a 3.1 mile radius of the LLRW site and that the two lizard species occur within that area, and that the area around the LLRW site (which would include the CIS site) should be protected to preserve the habitat for both species.

The 2007 document, at page 59, as in the previous documents, states that the sand dune lizard does not occur on the site of the LLRW project, but suitable habitat does occur in the area around the site. The area around the LLRW site would include the CIS site. A table on page 60 of the 2007 document lists the Texas horned lizard as being observed on the LLRW site, but there is no discussion of the horned lizard in the document.

The 2008 document is an environmental assessment relating to the relicensing of the WCS LLRW facility. The assessment was apparently limited to a very narrow set of issues regarding the LLRW operation and impacts on the site itself. There is no indication that any review was made of the area surrounding the site. Pages 11-12 of the document

mention the horned lizard and dunes sagebrush lizard but it simply says that the horned lizard is in the area and there is no dunes sagebrush lizard habitat on the site.

Taking all of these sources into consideration, the important conclusion is that the statements in Chapter 4 of the ER that there will be no adverse impact on the two lizard species or their habitat are demonstrably false. Section 4.5.8 of the ER says, “No communities or habitats that have been defined as rare or unique or that support threatened and endangered species have been identified on the CISF.” However, the sources described above were focused on the LLRW site adjacent to the CIS site. Therefore, the statement in Section 4.5.8 of the ER, that “[s]urveys were conducted at the WCS CISF sit in 2004” is not correct. The CIS site was not even identified at that time. Even so, the 2004 document states that suitable sand dune lizard habitat exists northeast of the LLRW site, and that that area should be protected. That is exactly where the CIS facility is to be located. Likewise, the 2007 document states that suitable habitat for the dune sagebrush lizard occurs in the area around the LLRW site, i.e., the area of the CIS site. The foregoing also puts the lie to the statement in the ER, 4.5.8, that “[a]reas to the west, south, and east of the site do not appear to have suitable habitat for the sand dune lizard within 16 to 32 km (10 to 20 mi.).”

Therefore, the statement in the ER, 4.5.10 that “the Texas horned lizard and the sand dune lizard either do not occur on the CISF or are highly adaptable” is not supported by the very sources upon which ISP contends that it relied in preparing the ER. The new information provides further proof and clarification that the statement in the ER alleging no impact to the two lizard species was false.

The documents allegedly relied upon by ISP in preparing the ER are 11 to 22 years out of date; were prepared to focus on the LLRW site, not the CIS site; there was apparently no credible species survey conducted, just random observations; and even so, the documents clearly confirm the main point of this contention, that the two lizard species and their habitat are present at the CIS site, so the conclusion in the ER that there will be no impact to the species is not supported by the evidence and is false. Therefore, it is no surprise that ISP did not make these documents public. These documents show an issue material to the findings the NRC must make to issue the requested license and in showing the existence of a genuine dispute with the ER on a material issue.

In order for the ER to comply with NEPA and NRC regulations and guidance, ISP must conduct current scientifically based species surveys for the actual CIS site, not haphazard random “observations.”

/s/ *Wallace L. Taylor*

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